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D.B. INCOME TAX APPEAL NO.11/2007.
[CIT UDAIPUR VS. M/S RAJASTHAN STATE LTD.]
DATED : 09.03.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.K.K.Bissa for the appellant

Heard learned counsel for the appellant.

This appeal is directed against the order of Tribunal.
The following three questions have been referred as questions
of law arising for consideration in this appeal.

[1] Whether on the facts and in the circumstances of the case as well as in the law the learned Tribunal was justified in deleting the addition made by the AO applying the provision of Section 43B of the Act regarding non payment of dead rent and the royalty before the due date of filing of return ignoring the finding of the AO that the assessee failed to submit the proof of the actual payment?

[2] Whether on the facts and in the circumstances of the case as well as in the law, the learned Tribunal is justified in deleting the additions of Rs.79,432/- made on account of return preliminary expenses under Section 35 D [2] of the Act?

[3] Whether on the facts and in the circumstances of the case as well as in the law the learned Tribunal was justified in deleting the addition of Rs.5,45,000/- made on account of the valuation of closing stock ignoring the finding of AO?

We are of the opinion that the question No.1 and 3 depend on pure findings of fact and do not give rise to question of law. The first question relates to the fact whether actual payment was made by the assessee to RSDMC under the agreement. While Assessing Officer without directing any inquiry to the recipient RSDMC has disallowed the claim on account of payment of royalty and dead rent on the ground that proof of actual payment has not been placed before it. However, the CIT [Appeals] as well as Tribunal found as a fact that actual payment has been made by the assessee. The finding whether actual payment has been made to the RSDMC is a finding of fact and does not give rise to any question of law nor the finding of fact is vitiated.

Similarly, question No.3 relates to the valuation of closing stock which has been decided on principle that closing stock disclosed by the assessee in the books of the accounts on the basis of regular method employed by the assessee does not call for any additions and the additions made by the Assessing Officer by revaluing the stock was deleted. This also is a pure question of fact. No question of law arise on that count.

So far as question No. 2 is concerned, the Tribunal on the basis of explanation to Section 35 D has found that

assessee was entitled to claim 1/10th of the cost of installation as deduction on revenue account out of the pre-establishment expenses. The provision of law being clear it also does not give rise to any substantial question of law.

Accordingly, the appeal fails and is hereby dismissed.

[CHATRA RAM JAT]J.

[RAJESH BALIA], J.